

15 December 2021

Insolvency Standard revised to address small business insolvency reforms

Accounting Professional & Ethical Standards Board Limited (APESB) today announced the issue of the revised APES 330 *Insolvency Services* primarily to address small business insolvency reforms and the creation of the restructuring practitioner's role.

The key changes in the revised APES 330 consist of:

- amendments to the definitions of Appointment and Approving Body and a new definition for Restructuring Practitioner;
- relocation of the *Declaration of Independence, Relevant Relationships and Indemnities* (DRRI) requirements to a new Section 5 (and resultant relocation of Sections 5, 6, 7, 8 and 9 to Sections 6, 7, 8, 9 and 11);
- a new Section 10 specific for Restructuring Practitioners with requirements on Independence and Professional Fees and Expenses;
- amendments to Appendix 1 on the application of legal precedents in relation to Independence for Restructuring Practitioners;
- amendments to Appendix 2 and the template DIRRI;
- amendments to Appendix 3 relating to necessary and proper fees in respect of complaints and disciplinary actions; and
- a new Appendix 4 provides context on the nature of Restructuring Practitioner appointments and the applicability of APES 330 to Restructuring Practitioners.

Please refer to Appendix 1 of this technical update for details of all the revisions. The revised APES 330 will be effective from **1 April 2022**.

The interactive PDF of the revised standard is available from APESB's [website](#).

– ENDS –

Technical Enquiries:

Mr. Channa Wijesinghe
Chief Executive Officer
Email: channa.wijesinghe@apesb.org.au
Phone: 03 9642 4372

Appendix 1

Revision to APES 330 (Issued August 2019)

Accounting Professional & Ethical Standards Board Limited (APESB) has approved the following revisions to APES 330 *Insolvency Services*, which was originally issued in September 2009 and revised in November 2011, September 2014 and August 2019.

| Paragraph/Section Reference | Revisions |
|-----------------------------|---|
| 1.1 | <p>The objectives of APES 330 <i>Insolvency Services</i> are:</p> <ul style="list-style-type: none"> • to mandate Independence requirements for Members in Public Practice who are responsible for Appointments; • to mandate that Members in Public Practice provide creditors with a <i>Declaration of Independence, Relevant Relationships and Indemnities</i> (DIRRI) and to specify the minimum requirements of the DIRRI; • to specify requirements for a Member in Public Practice who intends to replace another practitioner who has commenced an Appointment; • to specify requirements for a Member in Public Practice to disclose relevant information about Professional Fees and Expenses to the director(s) of the insolvent Entity or to the Insolvent Debtor prior to an Appointment; and • <u>to specify the requirements for Members in Public Practice who are responsible for Appointments as a Restructuring Practitioner; and</u> • to specify the quality control and documentation obligations of a Member in Public Practice who provides Insolvency Services. |
| 1.2 | <p>Accounting Professional & Ethical Standards Board Limited (APESB) issues APES 330 <i>Insolvency Services</i> (the Standard), which is effective for Insolvency Services commencing on or after 1 <u>April 2022</u> January 2020 and supersedes APES 330 <i>Insolvency Services</i> issued in <u>August 2019</u> September 2014. Earlier adoption of this Standard is permitted.</p> |
| 2 | <p>Appointment means the appointment of a Member in Public Practice;</p> <p>(a) as a Trustee or;</p> <p>(b) <u>as a liquidator or provisional liquidator, a voluntary administrator, an administrator of a deed of company arrangement, a Restructuring Practitioner, a Controller, or a scheme manager under Chapter 5 of the Corporations Act 2001; or an appointment</u></p> <p>(c) to provide Insolvency Services under any other legislation.</p> |
| 2 | <p>Approving Body means the body with authority to approve Professional Fees. Depending on the type of Appointment, this body will be the creditors, the members, a secured creditor, a Committee or, <u>the director or board of directors of a company, the court or any other body prescribed under law or regulation</u>. In limited circumstances, in an Appointment under the <i>Corporations Act 2001</i> or the <i>Bankruptcy Act 1966</i>, this approval is provided pursuant to those Acts.</p> |
| 2 | <p>Restructuring Practitioner <u>means a Member in Public Practice appointed as a small business restructuring practitioner in relation to a company or a restructuring plan under Part 5.3B of the Corporations Act 2001.</u></p> |

| Paragraph/Section Reference | Revisions |
|-------------------------------|--|
| 3.11 | In undertaking an Insolvency Service, a Member in Public Practice shall consider any guidance issued by the professional bodies ² and appropriate regulatory authorities. ² |
| 3.13 | Prior to accepting an Appointment from the director(s) of an insolvent Entity or <u>an</u> Insolvent Debtor, a Member in Public Practice shall make reasonable enquiries about the identity of the director(s) or Insolvent Debtor in accordance with the requirements of APES 320 <i>Quality Control for Firms</i> in relation to the <i>Acceptance and continuance of Client relationships and specific Engagements</i> as if an Appointment is an Engagement. |
| 4.1 | The requirements in Section 4 of this Standard do not apply to Appointments as <u>a</u> Controller, <u>or a</u> Restructuring Practitioner, <u>or a</u> liquidator in a members' voluntary liquidation. <u>Restructuring Practitioners are required to comply with the requirements in Section 10 <i>Restructuring Practitioner's Independence, Professional Fees and Expenses</i> of this Standard.</u> ³ |
| Footnote 3 | <u>Appendix 4 sets out a high-level summary of the applicability of the sections of APES 330 to Restructuring Practitioners.</u> |
| Footnotes 43 to 98 | [<i>Footnotes 3 to 8 of extant APES 330 remain unchanged, but have been renumbered as Footnotes 4 to 9.</i>] |
| 4.5 | <p>A Member in Public Practice shall not accept an Appointment where the Member, the Member's Firm, a Network Firm or their Partners have provided Professional Services to the insolvent Entity or any other Entity which:</p> <ul style="list-style-type: none"> (a) has reasonable potential to lead to litigation claims against the Member or the Member's Firm by a stakeholder of the Administration; (b) is material to the Administration; or (c) was related to the structuring of assets of the insolvent Entity in order to avoid the consequences of insolvency, <u>other than through the Administration</u>, even if that advice was provided at a time when the Entity was solvent. |
| 4.6 | <p>Where a Member in Public Practice is requested by an insolvent Entity, its directors or its creditors to consent to an Appointment to replace another person who has commenced the Administration, and the Member intends to agree to the request, the Member shall:</p> <ul style="list-style-type: none"> (a) give reasonable notice to the other person being not less than one business day prior to the meeting of creditors, except when the request is received within one business day before that meeting; (b) not solicit proxies directly or indirectly and shall act, and be seen to act, in the creditors' interests; (c) provide to the other person a <i>Declaration of Independence, Relevant Relationships and Indemnities</i> (DIRRI), containing the information required by paragraph 5.44-24, to be tabled at the meeting where the creditors decide whether to replace the other person; (d) provide details in the DIRRI of the Member's relationship with the Entity nominating the Member for the Appointment; and (e) disclose to the creditors, at the meeting where the creditors |

| Paragraph/Section Reference | Revisions |
|----------------------------------|---|
| | decide whether to replace the other person, the basis (including rates where applicable) on which the Member proposes to charge Professional Fees. |
| 4.11 | Trivial or inconsequential relationships are not a barrier to acceptance or retention of an Appointment by a Member in Public Practice. The Member is not required to list trivial or inconsequential relationships in the <i>Declaration of Independence, Relevant Relationships and Indemnities</i> (DIRRI) referred to in paragraph 5.44.24 . A relationship is trivial or inconsequential if it is remote, coincidental or insignificant. |
| 4.13 | A business relationship includes the provision of goods or services by the insolvent Entity to the Member <u>in Public Practice</u> , the Member's Firm, a Network Firm or their Partners or those Managerial Employees in the Office in which the Member practices. |
| <u>4.14</u> | <u>Subparagraph 4.12(c)(iv) does not include the provision of Professional Services to an Entity that has provided finance to the insolvent Entity and that finance Entity is not a related party of the Member, the Member's Firm, a Network Firm or their Partners or those Managerial Employees in the Office in which the Member practices.</u> |
| 4.154 to 4.210 | <i>[Paragraphs 4.14 to 4.20 of extant APES 330 remain unchanged, but have been renumbered as paragraphs 4.15 to 4.21.]</i> |
| 4.224 | The requirements of paragraphs 4.2049 and 4.210 do not prohibit a Member in Public Practice from providing general information on the insolvency process and the consequences of insolvency to both the company and its directors in their personal capacity, or the individual and related companies, as the case may be. General information is limited to information which is not specific to the insolvent Entity's particular facts and circumstances. |
| <u>5</u> | Declaration of Independence, Relevant Relationships and Indemnities |
| <u>5.1</u> | <u>The requirements in Section 5 of this Standard do not apply to Appointments as a Controller or a liquidator in a members' voluntary liquidation.</u> |
| <u>5.24.22 to 5.44.24</u> | <i>[Paragraphs 4.22 to 4.24 of extant APES 330 remain unchanged, but have been relocated and renumbered as paragraphs 5.2 to 5.4.]</i> |
| <u>5.54.25</u> | In addition to the requirements contained in paragraph 5.44.24 , a Member in Public Practice should consider including in the <i>Declaration of Independence, Relevant Relationships and Indemnities</i> (DIRRI), a declaration setting out all relationships the Member, the Member's Firm, a Network Firm or their Partners or those Managerial Employees in the Office in which the Member practises have had more than two years prior to the Appointment with: <ul style="list-style-type: none"> (a) the insolvent Entity; (b) if the insolvent Entity is a company – an Associate of the company; (c) if the insolvent Entity is an individual: <ul style="list-style-type: none"> (i) an Immediate or Close Family member of the individual; (ii) a spouse or dependant of an Immediate or Close Family member of the individual; or (iii) any Entity with which the individual or any of the persons listed |

| Paragraph/Section Reference | Revisions |
|--|---|
| | <p>above are associated; or</p> <p>(d) any other Entity that may be relevant to the creditors in assessing the Independence of the Member.</p> <p>When determining whether to make additional disclosures, the Member should take into consideration the nature of the prior relationship, the reasons for termination of the relationship and the relevance that additional information may have for creditors in assessing the Member's Independence.</p> |
| 5.64.26 to 5.84.28 | <i>[Paragraphs 4.26 to 4.28 of extant APES 330 remain unchanged, but have been relocated and renumbered as paragraphs 5.6 to 5.8.]</i> |
| 65 | Professional Engagement matters |
| 65.1 to 65.3 | <i>[Paragraphs 5.1 to 5.3 of extant APES 330 remain unchanged, but have been relocated and renumbered as paragraphs 6.1 to 6.3.]</i> |
| 76 | Dealing with property and other assets |
| 76.1 to 76.3 | <i>[Paragraphs 6.1 to 6.3 of extant APES 330 remain unchanged, but have been relocated and renumbered as paragraphs 7.1 to 7.3.]</i> |
| 76.4 | Paragraphs 76.1 and 76.3 do not apply where the Member has accepted an Appointment in respect of a retail operation under Administration and the assets are available for sale to the general public and no special treatment or preference over and above that granted to the general public is offered. |
| 87 | Expert Witness obligations |
| 87.1 | <i>[Paragraph 7.1 of extant APES 330 remains unchanged, but has been relocated and renumbered as paragraph 8.1.]</i> |
| 98 | Professional Fees and Expenses |
| 9.1 | <u>The requirements in Section 9 of this Standard do not apply to Appointments as a Restructuring Practitioner. Restructuring Practitioners are required to comply with the requirements in Section 10 <i>Restructuring Practitioner's Independence, Professional Fees and Expenses</i> of this Standard.¹⁰</u> |
| <u>Footnote 10</u> | <u>Appendix 4 sets out a high-level summary of the applicability of the sections of APES 330 to Restructuring Practitioners.</u> |
| 9.28.4 to 9.58.4 | <i>[Paragraphs 8.1 to 8.4 of extant APES 330 remain unchanged, but have been relocated and renumbered as paragraphs 9.2 to 9.5.]</i> |
| 9.68.5 | Members in Public Practice should exercise care in providing a fixed fee or unconditional quote to the director(s) of the insolvent Entity or <u>the</u> Insolvent Debtor prior to accepting an Appointment as this may be perceived to restrict the proper conduct of the Administration. |
| 9.78.6 | Members in Public Practice should obtain acknowledgement from the director(s) of the insolvent Entity or the Insolvent Debtor of the receipt of the information provided under paragraphs 9.38.2 and 9.58.4 prior to accepting the Appointment. |
| 9.88.7 | <i>[Paragraph 8.7 of extant APES 330 remains unchanged, but has been relocated and renumbered as paragraph 9.8.]</i> |

| Paragraph/Section Reference | Revisions |
|-----------------------------|--|
| 9.98.8 | The term 'necessary' in paragraph 9.88.7 means professional work that is: (a) directly connected with the Administration; and (b) performed in accordance with the duties of the Appointment and professional standards. |
| 9.108.9 | The term 'proper' in paragraph 9.88.7 means professional work that is performed in an effective and efficient manner in an Administration. <i>Guidance on matters to consider when determining necessary and proper Professional Fees and Expenses is provided in Appendix 3.</i> |
| 9.118.10 to 9.178.16 | <i>[Paragraphs 8.10 to 8.16 of extant APES 330 remain unchanged, but have been relocated and renumbered as paragraphs 9.11 to 9.17.]</i> |
| Footnote 119 | <i>[Footnote 9 of extant APES 330 remains unchanged, but has been renumbered to Footnote 11.]</i> |
| 9.188.17 | When considering whether a proposed Contingent Fee arrangement in a particular Administration meets the requirements of paragraph 9.178.16, a Member in Public Practice shall consider the following: (a) funds available to the Administration; (b) funding from alternative sources such as creditors or a litigation funder; (c) the costs of the alternative sources of funds in comparison to the Contingent Fee arrangement; (d) the risk associated with the tasks to be undertaken for the Contingent Fee; and (e) the appropriateness of the amount of the proposed Contingent Fee in relation to the nature of the Administration and the risk associated with the task to be undertaken. |
| 9.198.18 to 9.228.21 | <i>[Paragraphs 8.18 to 8.21 of extant APES 330 remain unchanged, but have been relocated and renumbered as paragraphs 9.19 to 9.22.]</i> |
| 9.238.22 | Where a Member in Public Practice has prospective Professional Fees approved in accordance with paragraph 9.228.21, the scale of rates used to draw Professional Fees shall be the scale of rates provided by the Member to the Approving Body at the time of the approval, unless a specific formula to increase the scale of rates was incorporated into the resolution passed by the Approving Body. If a specific formula was not incorporated into the resolution, then the Member shall only change the scale of rates by obtaining further approval from the Approving Body. |
| 9.248.23 | Where a Member in Public Practice receives an Upfront Payment in respect of a proposed Administration, the Member shall ensure: (a) the monies are held in trust and they <u>Member complies</u> with the relevant requirements of APES 310 <i>Client Monies</i> as if the Appointment related to a client; (b) there are no conditions on the conduct or outcome of the Administration attached to the monies; (c) full disclosure is made to creditors in the <i>Declaration of Independence, Relevant Relationships and Indemnities (DIRRI)</i>; (d) approval of Professional Fees is obtained prior to them being |

| Paragraph/Section Reference | Revisions |
|-------------------------------|---|
| | <p>paid to the Appointee; and</p> <p>(e) the monies are accounted for as funds of the Administration.</p> |
| <p><u>9.258.24</u></p> | <p>Where a Member in Public Practice has accepted an Appointment, other than as a Controller, and receives money from an Entity, other than from the assets of the insolvent Entity, to meet the costs of the Administration, the Member shall disclose the receipt of this money to the Approving Body and shall obtain approval to apply the money to Professional Fees from the Approving Body in accordance with paragraph <u>9.208.19</u>.</p> |
| <p><u>9.268.25</u></p> | <p>Approval of the Approving Body under paragraph <u>9.258.24</u> is not required if the <i>Corporations Act 2001</i>, <i>Bankruptcy Act 1966</i> or guidance issued by the Australian Securities and Investments Commission or Australian Financial Security Authority stipulates that approval is not required.</p> |
| <p><u>10</u></p> | <p><u>Restructuring Practitioner’s Independence, Professional Fees and Expenses</u></p> |
| <p><u>10.1</u></p> | <p><u>The requirements in Section 10 of this Standard apply to Appointments as a Restructuring Practitioner.¹² Appointments other than as a Restructuring Practitioner are required to comply with the requirements in Section 4 <i>Professional Independence</i> as applicable and Section 9 <i>Professional Fees and Expenses</i> of this Standard.</u></p> |
| <p><u>Footnote 12</u></p> | <p><u>Appendix 4 sets out a high-level summary of the applicability of the sections of APES 330 to Restructuring Practitioners.</u></p> |
| <p><u>10.2</u></p> | <p><u>Restructuring Practitioner’s Independence</u></p> <p><u>A Restructuring Practitioner shall maintain Independence.¹³</u></p> |
| <p><u>Footnote 13</u></p> | <p><u>Australian courts have established legal precedents in respect of independence in the context of Insolvency Services. Members should refer to the definition of Independence and Appendix 1.</u></p> |
| <p><u>10.3</u></p> | <p><u>Threats to a Restructuring Practitioner’s Independence may be created by prior Professional Services performed by the Restructuring Practitioner or their interests or relationships. The Restructuring Practitioner’s assessment of any such threats includes whether a reasonable and informed third party, considering all of the facts and circumstances, would conclude the threats to the Restructuring Practitioner’s Independence are at an Acceptable Level.</u></p> |

| Paragraph/Section Reference | Revisions |
|-----------------------------|--|
| 10.4 | <p><u>Prior to accepting an Appointment as a Restructuring Practitioner, a Member in Public Practice shall identify, evaluate and address threats to the Independence of the Member. Where the Member identifies a threat that is not at an Acceptable Level, the Member shall not accept the Appointment unless:</u></p> <p><u>(a) the threat can be eliminated or reduced to an Acceptable Level by:</u></p> <p><u>(i) eliminating the circumstances, including interests or relationships, that are creating the threat;</u></p> <p><u>(ii) applying safeguards, where available and capable of being applied, to reduce the threat to an Acceptable Level; or</u></p> <p><u>(b) the threat arises in circumstances or relationships that are permitted by this Standard or law or regulations.</u></p> |
| 10.5 | <p><u>A Restructuring Practitioner shall:</u></p> <p><u>(a) act impartially in the discharge of the Restructuring Practitioner's duties and responsibilities;</u></p> <p><u>(b) ensure that the Restructuring Practitioner's personal interests do not conflict with the Restructuring Practitioner's duties; and</u></p> <p><u>(c) remain alert for new information or changes in facts and circumstances that may create threats to Independence.</u></p> |
| 10.6 | <p><u>A Member in Public Practice shall not accept an Appointment as a Restructuring Practitioner where the Member, the Member's Firm, a Network Firm or their Partners have provided Professional Services to the insolvent Entity or any other Entity which:</u></p> <p><u>(a) has reasonable potential to lead to litigation claims against the Member or the Member's Firm by a stakeholder of the Administration;</u></p> <p><u>(b) is material to the Administration; or</u></p> <p><u>(c) was related to the structuring of assets of the insolvent Entity in order to avoid the consequences of insolvency, other than through the Administration, even if that advice was provided at a time when the Entity was solvent.</u></p> |
| 10.7 | <p><u>When circumstances or relationships giving rise to a threat to Independence are identified after the commencement of an Administration as a Restructuring Practitioner, a Restructuring Practitioner shall evaluate that threat and:</u></p> <p><u>(a) continue performing the Administration if the Restructuring Practitioner determines that the threat would not have precluded the Restructuring Practitioner from accepting the Appointment had the threat been identified prior to the commencement of the Appointment. The Restructuring Practitioner shall amend the Declaration of Independence, Relevant Relationships and Indemnities (DIRRI) and send it to all the creditors; or</u></p> <p><u>(b) where the threat to the Independence of the Member in Public Practice would have precluded the Member from accepting the Appointment had the threat been identified prior to the commencement of the Appointment, the Restructuring Practitioner shall address the threat by resigning from the Appointment by written notice to the company to enable the Appointment of a replacement Restructuring Practitioner.</u></p> |

| Paragraph/Section Reference | Revisions |
|-----------------------------|--|
| 10.8 | <p><u>Interests and Relationships</u></p> <p><u>For the purpose of this Standard, when seeking to identify relationships with an insolvent Entity that are relevant to an Appointment as a Restructuring Practitioner, a Member in Public Practice shall take reasonable steps to identify and evaluate any threats the Member has reason to believe are created by the Firm's or Network Firms' interests and relationships with the insolvent Entity or its Associates. The Member shall consider the following matters when identifying relevant Network Firms:</u></p> <p><u>(a) the geographical regions or countries in which the insolvent Entity or its Associates operate; and</u></p> <p><u>(b) relationships with the directors or officers of the insolvent Entity or its Associates.</u></p> |
| 10.9 | <p><u>A Member in Public Practice shall not accept an Appointment as a Restructuring Practitioner, where the Member, the Member's Firm, a Network Firm or their Partners or those Managerial Employees in the Office in which the Member practises have, or have had, any of the following relationships:</u></p> <p><u>(a) an Immediate or Close Family relationship with:</u></p> <p><u>(i) the insolvent Entity;</u></p> <p><u>(ii) an Associate of the insolvent Entity;</u></p> <p><u>(iii) an employee of, or adviser, to the insolvent Entity who is in a position to exert direct and significant influence over the insolvent Entity; or</u></p> <p><u>(iv) an Entity or an Associate of that Entity that has provided finance to the insolvent Entity.</u></p> <p><u>(b) a close personal relationship with:</u></p> <p><u>(i) the insolvent Entity;</u></p> <p><u>(ii) an Associate of the insolvent Entity; or</u></p> <p><u>(iii) an employee of, or adviser to, the insolvent Entity who is in a position to exert direct and significant influence over the insolvent Entity.</u></p> |
| 10.10 | <p><u>Prior to accepting an Appointment as a Restructuring Practitioner, a Member in Public Practice shall identify, evaluate and address threats to the Independence of the Member in accordance with paragraph 10.4, where the Member, the Member's Firm, a Network Firm or their Partners or those Managerial Employees in the Office in which the Member practises have, or have had, any of the following relationships:</u></p> <p><u>(a) a material business relationship¹⁴, including the holding of a material Financial Interest, whether directly or indirectly in or jointly in the previous two years with:</u></p> <p><u>(i) the insolvent Entity;</u></p> <p><u>(ii) an Associate of the insolvent Entity;</u></p> <p><u>(iii) an employee of, or adviser to, the insolvent Entity who is in a position to exert direct and significant influence over the insolvent Entity; or</u></p> <p><u>(iv) an Entity that has provided finance to the insolvent Entity.¹⁵</u></p> |

| Paragraph/Section Reference | Revisions |
|-----------------------------|---|
| | <p><u>(b) a material loan or material guarantee, in the previous two years, to or from:</u></p> <p><u>(i) the insolvent Entity;</u></p> <p><u>(ii) an Associate of the insolvent Entity; or</u></p> <p><u>(iii) an employee of, or adviser to, the insolvent Entity who is in a position to exert direct and significant influence over the insolvent Entity.</u></p> <p><u>(c) employment with the insolvent Entity in the preceding two years, in a position to exert direct and significant influence over the insolvent Entity.</u></p> |
| Footnote 14 | Refer to paragraph 4.13 for the meaning of business relationship for the purposes of this subparagraph. |
| Footnote 15 | Refer to paragraph 4.14 in relation to the application of this subparagraph. |
| 10.11 | <p><u>In respect of prior relationships of the nature referred to in subparagraphs 10.10(a), 10.10(b) and 10.10(c), notwithstanding that the relationship occurred more than two years prior to the proposed Appointment, a Member in Public Practice should evaluate any threats a prior relationship is likely to create to the Member's Independence. In performing this assessment, the Member should determine whether a reasonable person considering all of the facts and circumstances would conclude that there are significant threats to the Member's Independence posed by a prior relationship. Factors to consider include the nature of the prior relationship and the reasons for it being terminated.</u></p> |
| 10.12 | <p><u>Prior Professional Services (including those provided at different Firms)</u></p> <p><u>A Member in Public Practice shall not accept an Appointment as a Restructuring Practitioner where the Member, the Member's Firm or a Network Firm has during the prior two years provided a Professional Service to the insolvent Entity, where that Professional Service:</u></p> <p><u>(a) affects the Member's ability to comply with the statutory and fiduciary obligations associated with the Administration; and</u></p> <p><u>(b) creates threats to the Member's ability to comply with the fundamental principles of the Code and Independence when performing the duties of the Administration.</u></p> |
| 10.13 | <p><u>Where a Member in Public Practice is considering accepting an Appointment as a Restructuring Practitioner and two or more Firms or Network Firms have merged in the preceding two years, the Member shall evaluate any relationships that the Member is aware of, or ought reasonably to be aware of, which the insolvent Entity had with the Firm, previous Firm(s) or Network Firm(s) in accordance with the requirements of this Standard.</u></p> |
| 10.14 | <p><u>Where a Member in Public Practice is considering accepting an Appointment as a Restructuring Practitioner and has moved Firms in the preceding two years, the Member shall evaluate any relationships that the Member is aware of, or ought reasonably to be aware of, which the insolvent Entity had with the previous Firm or its Network Firms during the time that the Member was a Partner or Managerial Employee. Where there were prior relationships, the Member shall disclose the relationships in the Declaration of</u></p> |

| Paragraph/Section Reference | Revisions |
|-----------------------------|--|
| | <u>Independence, Relevant Relationships and Indemnities (DIRRI). Where the prior relationships pose significant threats to Independence and there are no safeguards that can eliminate the threats or reduce them to an Acceptable Level, the Member shall decline the Appointment.</u> |
| 10.15 | <u>Pre-appointment Advice</u> <u>Where a Member in Public Practice is considering accepting an Appointment as a Restructuring Practitioner, the Member shall not provide Pre-appointment Advice to both the company and its directors in their personal capacity if such Pre-appointment Advice might compromise the outcome from the Administration for the company's creditors.</u> |
| 10.16 | <u>Restructuring Practitioner's Professional Fees and Expenses</u> <u>Restructuring Practitioners shall be remunerated for such service by way of Professional Fees in accordance with Section 330 Fees and Other Types of Remuneration of the Code, subject to the limitations in paragraph 3.26.</u> |
| 10.17 | <u>Restructuring Practitioners shall only claim reasonable Professional Fees and Expenses in respect of Professional Services performed or to be performed for an Administration which are necessary and proper.</u> |
| 10.18 | The term 'necessary' in paragraph 10.17 means professional work that is: (a) directly connected with the Administration; and (b) performed in accordance with the duties of the Appointment and professional standards. |
| 10.19 | The term 'proper' in paragraph 10.17 means professional work that is performed in an effective and efficient manner in an Administration. <i>Guidance on matters to consider when determining necessary and proper Professional Fees and Expenses is provided in Appendix 3.</i> |
| 10.20 | <u>Restructuring Practitioners shall only claim Expenses or fees for Insolvency Services or Professional Services other than Insolvency Services provided by the Restructuring Practitioner, the Restructuring Practitioner's Firm, a Network Firm or a third party to an Administration, that are specified in the:</u> ¹⁶ <u>(a) fixed amount of Professional Fees approved by the Approving Body for a Restructuring Practitioner for a company;</u> <u>(b) Professional Fees determined under a method approved by the Approving Body for a Restructuring Practitioner for a company in the event the board of the company consents to proceedings;</u> <u>or</u> <u>(c) restructuring plan approved by the Approving Body for Professional Fees determined under a method specified in the plan in the event the board of the company consents to proceedings.</u> |
| Footnote 16 | Appendix 4 sets out a high-level summary of the Professional Fees that Restructuring Practitioners are entitled to charge for Insolvency Services. |

| Paragraph/Section Reference | Revisions |
|-----------------------------|---|
| <u>10.21</u> | <u>Restructuring Practitioners seeking approval for Professional Fees from the Approving Body, in addition to any statutory requirements, shall provide sufficient information so as to allow the Approving Body to make an informed assessment as to whether the Professional Fees are reasonable.</u> |
| <u>10.22</u> | <p><u>Contingent Fees</u></p> <p><u>Restructuring Practitioners shall not enter into an arrangement to receive a Contingent Fee for Insolvency Services performed in relation to proceedings if that arrangement:</u></p> <ul style="list-style-type: none"> <u>(a) impairs the Restructuring Practitioner’s Independence;</u> <u>(b) results in the receipt of a Contingent Fee for performing professional work that the Restructuring Practitioner is required to complete under the relevant legislation governing the Appointment;</u> <u>(c) is inconsistent with the fiduciary obligations of the Restructuring Practitioner; or</u> <u>(d) results in the perception that the Restructuring Practitioner is acting in the Restructuring Practitioner’s interests, rather than in the best interests of the company and its creditors.</u> |
| <u>10.23</u> | <p><u>When considering whether a proposed Contingent Fee arrangement in a particular Administration meets the requirements of paragraph 10.22, a Restructuring Practitioner shall consider the following:</u></p> <ul style="list-style-type: none"> <u>(a) the risk associated with the tasks to be undertaken for the Contingent Fee; and</u> <u>(b) the appropriateness of the amount of the proposed Contingent Fee in relation to the nature of the Administration and the risk associated with the task to be undertaken.</u> |
| <u>10.24</u> | <p><u>Where a Restructuring Practitioner enters into an arrangement to receive a Contingent Fee for Insolvency Services performed in relation to proceedings, the Restructuring Practitioner shall obtain approval from the Approving Body prior to commencement of Professional Services after having disclosed the following information:</u></p> <ul style="list-style-type: none"> <u>(a) details of the arrangement including the nature of the contingency and how achievement of the contingency will be assessed;</u> <u>(b) the Restructuring Practitioner’s Professional Fees in the event the contingency is or is not achieved;</u> <u>(c) when the Restructuring Practitioner’s Professional Fees are expected to be drawn; and</u> <u>(d) why the arrangement to receive a Contingent Fee is in the best interest of the company and its creditors.</u> |
| <u>10.25</u> | <p><u>Drawing of Professional Fees and Expenses</u></p> <p><u>A Restructuring Practitioner shall only draw Professional Fees once the proper resolution or authority has been obtained from the Approving Body and in accordance with the terms of approval.</u></p> |

| Paragraph/Section Reference | Revisions |
|-----------------------------|--|
| <u>10.26</u> | <u>Where a Restructuring Practitioner has entered into a fixed fee arrangement in respect of Professional Fees set out in subparagraphs 10.20(a), 10.20(b) or 10.20(c), the Restructuring Practitioner shall draw the fixed fee at the conclusion of the Administration or in amounts and at milestones specified by the Approving Body.</u> |
| <u>10.27</u> | <u>Where a Restructuring Practitioner seeks approval from the Approving Body for Professional Fees in relation to proceedings, the Restructuring Practitioner shall specify the method for determining those Professional Fees, which may include the scale of rates used by the Firm.</u> |
| <u>10.28</u> | <u>Where a Restructuring Practitioner has Professional Fees approved in accordance with paragraph 10.27, the scale of rates used to determine Professional Fees shall be the scale of rates provided by the Restructuring Practitioner to the Approving Body at the time of the approval, unless a specific formula to increase the scale of rates was incorporated into the resolution passed by the Approving Body or the restructuring plan approved by the Approving Body.</u> |
| <u>10.29</u> | <p><u>Receipt of monies</u></p> <p><u>Where a Member in Public Practice receives an Upfront Payment in respect of a proposed Administration as a Restructuring Practitioner, the Member shall ensure:</u></p> <p><u>(a) the monies are held in trust and the Member complies with the requirements of APES 310 Client Monies as if the Appointment related to a client;</u></p> <p><u>(b) there are no conditions on the conduct or outcome of the Administration attached to the monies;</u></p> <p><u>(c) full disclosure is made to creditors in the Declaration of Independence, Relevant Relationships and Indemnities (DIRRI);</u></p> <p><u>(d) approval of Professional Fees is obtained prior to them being paid to the Appointee; and</u></p> <p><u>(e) the monies are accounted for as funds of the Administration.</u></p> |
| <u>119</u> | Documentation and quality control |
| <u>119.1 and 119.2</u> | [Paragraphs 9.1 and 9.2 of extant APES 330 remain unchanged, but have been relocated and renumbered as paragraphs 11.1 and 11.2.] |
| <u>119.3</u> | A Member in Public Practice may destroy the working papers referred to in paragraph 119.2 in accordance with the requirements of the Corporations Act 2001 or Bankruptcy Act 1966. |
| <u>119.4</u> | [Paragraph 9.4 of extant APES 330 remains unchanged, but has been relocated and renumbered as paragraph 11.4.] |
| Appendix 1 | [Amendments to Appendix 1 on the application of legal precedents in relation to Independence for Restructuring Practitioners.] |
| Appendix 2 | [Amendments to Appendix 2 and the template Declaration of Independence, Relevant Relationships and Indemnities (DIRRI).] |

| Paragraph/Section Reference | Revisions |
|------------------------------------|---|
| Appendix 3 | <i>[Amendments to Appendix 3 to clarify the exception where a Member in Public Practice can claim Professional Fees and Expenses for time spent in relation to communicating with regulators or professional bodies about complaints that are deemed unfounded or without merit and to include disciplinary actions to the list of matters where Professional Fees and Expenses cannot be claimed.]</i> |
| <u>Appendix 4</u> | <i>[New Appendix 4 providing context on the nature of Restructuring Practitioner appointments, remuneration entitlements and applicability of sections in APES 330 to Restructuring Practitioners.]</i> |
| Appendix <u>5</u>4 | Summary of revisions to the previous APES 330 (Issued in August 2019) – amended |